

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**REPLY COMMENTS OF COMCAST CORPORATION**

Pursuant to section 1.429(g) of the Federal Communications Commission’s (“Commission’s” or “FCC’s”) rules,<sup>1</sup> Comcast Corporation (“Comcast”) and its affiliates hereby submit these reply comments in response to the comments and oppositions to petitions for reconsideration or clarification<sup>2</sup> of the Commission’s Report and Order and Further Notice of Proposed Rulemaking.<sup>3</sup>

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<sup>1</sup> 47 C.F.R. § 1.429(g).

<sup>2</sup> FCC Public Notice, *Petitions for Reconsideration of Action in Rulemaking Proceeding*, Report No. 2945 (rel. Jan. 12, 2012), 77 Fed. Reg. 3635 (Jan. 25, 2012).

<sup>3</sup> *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC

## **I. INTRODUCTION**

Comcast files this short reply to address one issue raised in the initial comments. Specifically, the Commission should reject claims by AT&T and others that the FCC lacks the legal authority to adopt its reform plan for certain types of originating toll traffic. Contrary to their contentions, the Commission clearly has authority under the Communications Act of 1934, as amended, to implement its plan, including those aspects that apply to originating VoIP-PSTN and other intrastate toll traffic.

## **II. THE COMMISSION SHOULD REJECT CLAIMS THAT IT LACKS THE LEGAL AUTHORITY TO ADOPT ITS TRANSITION PLAN FOR ORIGINATING VOIP-PSTN TOLL TRAFFIC**

AT&T asserts that the Commission does not have authority to prescribe charges applicable to originating VoIP-PSTN toll traffic.<sup>4</sup> Cbeyond, EarthLink, Integra Telecom, and tw telecom (“Cbeyond, *et al.*”) contend that the Commission does not have authority to set charges that apply to intrastate originating VoIP-PSTN toll traffic.<sup>5</sup> Both claims are without merit and should be rejected.

The Commission correctly concluded in the Order that section 251(g) empowers the agency to adopt a symmetrical transitional intercarrier compensation regime for VoIP-PSTN originating and terminating toll traffic.<sup>6</sup> AT&T challenges this conclusion on the erroneous basis that such originating traffic does not fall within the types of traffic covered by that

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Docket Nos. 03-109, 05-337, 07-135, and 10-90; GN Docket No. 09-51; CC Docket Nos. 96-45 and 01-92; and WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“Order” or “Order and FNPRM”).

<sup>4</sup> Comments of AT&T Services, Inc., WC Docket No. 10-90, at 36-37 (Feb. 9, 2012).

<sup>5</sup> Comments of Cbeyond, Inc., EarthLink, Inc., Integra Telecom, Inc. and tw telecom inc., WC Docket No. 10-90, at 4 (Feb. 9, 2012) (“Cbeyond, *et al.* Comments”).

<sup>6</sup> Order and FNPRM ¶¶ 955-958.

grandfathering provision, because the Commission did not determine whether VoIP was an information or telecommunications service prior to enactment of the Telecommunications Act of 1996.

The Commission expressly and correctly rejected AT&T's assertion that interexchange information service traffic is not subject to section 251(g)'s grandfathering provision. Specifically, the FCC observed that "the Commission has always recognized that information-service providers providing interexchange services were obtaining exchange access from the LECs."<sup>7</sup> The fact that under the FCC access charge regime in effect in 1996, the rates applied to originating interexchange information services differed from those applied to interexchange telecommunications services is irrelevant in this context, as is the classification of the entities assessed. The relevant fact is that "interexchange information service traffic was subject to the over-arching Commission rules governing exchange access prior to the 1996 Act, and therefore [is] subject to the grandfathering provision of section 251(g)."<sup>8</sup>

The Commission also properly rejected AT&T's argument that the D.C. Circuit's decision in *WorldCom v. FCC* precludes the Commission from finding that originating VoIP toll traffic is covered by section 251(g). As the Order notes, the court's analysis emphasized the "uncertainty" about whether the "ISP-bound traffic" at issue in that case was traffic being exchanged between LECs: "the fact that the carrier serving the [Internet Service Provider] was acting as a LEC . . . would be dispositive that compensation for that traffic exchange could not be encompassed by section 251(g)."<sup>9</sup> The exchange of originating VoIP toll traffic, in contrast,

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<sup>7</sup> *Id.* ¶ 957.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* ¶ 958, citing *WorldCom, Inc. v. FCC*, 288 F.3d 429, 433-34 (D.C. Cir. 2002).

clearly does not involve an exchange between two LECs and, thus, does fall within section 251(g).<sup>10</sup>

Contrary to Cbeyond, *et al.*'s claims,<sup>11</sup> the Commission also has authority over intrastate originating access services pursuant to section 251(g). Cbeyond, *et al.* contend that the Commission's authority under section 251(b)(5) is limited to the "transport and termination of telecommunications" and therefore does not extend to intrastate originating access.<sup>12</sup> The authority granted the Commission under section 251(g), however, extends to more than terminating traffic, because it preserves all pre-existing "equal access and nondiscriminatory interconnection . . . obligations (including receipt of compensation) . . . under any court order, consent decree, or regulation, order, or policy of the Commission, until such . . . obligations are explicitly superseded by regulations prescribed by the Commission."<sup>13</sup> Because both the intrastate and interstate access charge regimes were established pursuant to the 1982 AT&T consent decree,<sup>14</sup> section 251(g) preserves both systems and grants the Commission authority to

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<sup>10</sup> Because the Commission's authority under section 251(g) extends to originating VoIP toll traffic, it plainly has discretion to fashion a transition plan for gradually supplanting the existing compensation arrangements with a new regime. *See, e.g., Sorenson Commc'ns, Inc. v. FCC*, 659 F.3d 1035, 1046 (10th Cir. 2011) (court affording substantial deference to the FCC's adoption of interim rates); *Competitive Telecomms. Ass'n v. FCC*, 309 F.3d 8, 14-15 (D.C. Cir. 2002) ("Avoidance of market disruption pending broader reforms is, of course, a standard and accepted justification for a temporary rule."); *Capital Cities/ABC v. FCC*, 29 F.3d 309, 316 (7th Cir. 1994) ("Phased deregulation is common, practical, and sensible. Involving as it does judgmental considerations that are difficult to quantify, it is unlikely to flunk judicial review."). AT&T's claim to the contrary, thus, should be rejected.

<sup>11</sup> Cbeyond, *et al.* Comments at 4.

<sup>12</sup> *Id.*

<sup>13</sup> 47 U.S.C. § 251(g).

<sup>14</sup> *See United States v. AT&T Co.*, 552 F. Supp. 131, 227, 232-34 (D.D.C. 1982).

adopt regulations that gradually replace the existing intrastate and interstate originating and terminating access obligations with a new regime.<sup>15</sup>

### III. CONCLUSION

For the foregoing reasons, the Commission should reject arguments that it lacks the legal authority to adopt its transition plan for originating VoIP-PSTN toll traffic.

Respectfully submitted,

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<sup>15</sup> See *WorldCom, Inc. v. FCC*, 288 F.3d at 432. Notably, the statute does not envision a role for states in superseding the interstate and intrastate access charge regimes established by the consent decree. See 47 U.S.C. § 251(g) (preserving LECs' exchange access obligations "until such . . . obligations are explicitly superseded by regulations prescribed *by the Commission . . .*") (emphasis added).

### **Certificate of Service**

I, Ruth E. Holder, hereby certify that on this 21st day of February, 2012, I caused true and correct copies of the foregoing Reply Comments of Comcast Corporation to be mailed by first class U.S. mail to:

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